



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2009-0139]

RIN 1625-A11

Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

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SUMMARY: This final rule revises an existing interim rule to permanently establish a Regulated Navigation Area (RNA) protecting floodwalls and levees in the New Orleans area from possible damage caused by vessels that can breakaway during certain tropical storm and hurricane conditions. This final rule also addresses comments from the public on the previously published Supplemental Notice of Proposed Rulemaking (SNPRM) and economic review for this RNA. This action is necessary for the flood protection of high-risk areas throughout the Greater New Orleans Area when a tropical event threatens to approach and impact the area.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule has been enforced with actual

notice since April 1, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2009-0139]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Brandon Sullivan, Sector New Orleans Waterways Division, U.S. Coast Guard; telephone (504) 365-2281, e-mail Brandon.J.Sullivan@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
SNPRM	Supplemental Notice of Proposed Rulemaking
CPRA	Coastal Protection Restoration Authority
HSDRRS	Hurricane Storm Damage Risk Reduction System
USACE	United States Army Corps of Engineers

COTP	Captain of the Port
IHNC	Inner Harbor Navigation Canal
GIWW	Gulf Intracoastal Waterway
MM	Mile Marker
RNA	Regulated Navigational Area

#### A. Regulatory History and Information

The Coast Guard is issuing this final rule without a full 30-day notice pursuant to authority under section 4(a) of the Administrative Procedures Act (APA) (5 U.S.C. 553). Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. This final rule makes permanent the RNA specific to safety measures during hurricane season which is June 1 through November 30 each year. The existing interim rule for this RNA has been effective for approximately four years and requires necessary changes, based on the completed flood protection system, through this final rule for the approaching 2014 hurricane season. This final rule also allows for possible planned deviation from the RNA through a Hurricane Operations Plan submitted at least one month before the season begins, which is May 1, 2014 for this year. Throughout the rulemaking process for this RNA, those regulated by the rule, specifically industry and waterway users, have participated in this rulemaking through public meetings and the public comment process and are fully aware that this RNA will be in place for the 2014 hurricane season. It is unnecessary to further delay

the updated RNA by waiting for a full 30 days notice to take place through publication in the Federal Register.

On June 8, 2010, the Coast Guard published an interim rule entitled "Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA" in the FR (75 FR 32275) and provided responses to all comments to the original Notice of Proposed Rulemaking (NPRM), which published May 14, 2009 in the Federal Register (74 FR 22722). That interim rule is codified and the RNA is currently enforced under 33 CFR 165.838. The intent behind establishing the RNA through an interim rulemaking was to put into place interim restrictions providing the necessary protections at the time and until the final floodwalls and storm protection system were completed and final specifications established and received. The interim rule stated that the Coast Guard would reevaluate the RNA upon completion of the United States Army Corps of Engineers (USACE) Hurricane and Storm Damage Risk Reduction System (HSDRRS). With the HSDRRS being fully operational for the 2013 hurricane season, the Coast Guard, with input from Federal, State and local agencies determined that the RNA is still necessary.

On June 7, 2013, the Coast Guard published a SNPRM entitled "Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Harvey Canal, Algiers Canal, New Orleans, LA" in the Federal Register (78 FR 34293). In the

SNPRM, the Coast Guard proposed changes to the requirements of the RNA from those in the interim rule. In developing these requirements, the Coast Guard established a work group comprised of Federal, State and local flood protection authorities, and port and industry representatives. Through this work group, public meetings were held and input from the meetings helped to address the protections still necessary and modify the restrictions in the interim rule to provide those protections. The minutes from those meetings are available for public viewing on the docket. In addition to the work-group meetings, the Coast Guard considered lessons learned from implementing the RNA provisions of the interim rule during Hurricane Isaac in 2012. Also, while drafting the SNPRM, the Coast Guard met formally with the USACE six times to 1) determine the risks presented by vessels to the HSDRRS, 2) understand the conditions under which such risks occur, and 3) to ensure that a final RNA aligns with USACE operations and concerns.

The Coast Guard also held a public meeting on June 20, 2013 at 5 p.m. local time, to receive comments on the SNPRM. Comments received at the public meeting were supportive of the overall collaborative planning process, and did not contain any specific content requiring a Coast Guard response in this Final Rule. A transcript of that public meeting was uploaded to the public docket. During the SNPRM comment period, the Coast Guard also

received 18 written comments from seven entities on the proposed changes within the public docket, which are addressed in this final rule below. These comments did not result in any substantial changes to the requirements of the RNA in this final rule.

In January 2013, the Coast Guard also requested information on a voluntary basis from 10 local industry and waterway users operating within the RNA. This information was requested in the form a questionnaire available in the public docket accessed as directed under ADDRESSES. The Coast Guard worked with an assigned Coast Guard economist to develop the questionnaire, which was used to gather information on the possible economic impacts - both cost and benefit - that the proposed changes may impose. These questions included but were not limited to assessing the economic impact of requiring mooring arrangements similar to those required under 33 CFR 165.803; developing and submitting mooring arrangements as an alternate to those listed under 33 CFR 165.803; evacuating all vessels out of the RNA during enforcement periods; requiring weekly inspections, continuous surveillance, and certain equipment if a facility wishes to keep vessels within the RNA during enforcement; and requiring an annual Hurricane Operations Plan from facilities desiring to keep vessels within certain areas of the RNA as a preplanned deviation from the RNA restriction. The existing RNA,

the proposed changes to the RNA in the SNPRM, and this final rule restrict all vessels from entering or remaining in any part of the designated RNA during enforcement. The existing RNA, the RNA as proposed in the SNPRM and this final rule also provide an avenue for vessels and facilities to pre-plan a deviation from RNA enforcement. Comments received at public meetings and during comment periods throughout the rulemaking process for this RNA support the opportunity to deviate if a facility and/or vessel show that they can do so safely and securely. The current RNA affords vessels and facilities the opportunity to deviate from the restriction through applying for an annual waiver and the option to deviate is provided for in this final rule through submitting an Annual Hurricane Operations Plan. This plan replaces the current waiver requirement.

#### B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this final rule is to permanently establish the RNA to protect floodwalls and levees in the New Orleans area

from possible storm damage caused by moored barges and vessels, and to prevent flooding in the New Orleans area that could result from that storm damage.

This final rule permanently establishes the RNA now that the flood protection system is complete. This final rule responds to the risks at hand using knowledge and expertise and addressing the needs uncovered throughout this rulemaking process including the NPRM, the interim rule, the SNPRM, and input and participation from federal, state, and local agencies as well as public and industry stakeholders. Without this RNA, when navigational structures within the HSDRRS are to be closed because of an approaching storm, the Coast Guard would have to individually order each vessel within the subject area to depart or to comply with specific mooring arrangements. Issuing individual orders places a significant administrative burden on the Coast Guard during a time when important pre-storm preparations must also be made. By creating this rule, the Coast Guard is informing the public in advance of the restrictions and requirements for vessels in the area during periods of enforcement, enabling vessel and facility operators to make seasonal plans and arrangements for RNA evacuation and thus eliminating the need for individual Captain of the Port (COTP) Orders.



An additional purpose of this RNA is to aid the Coast Guard in the early identification of vessels that may not depart the RNA when required. Under PWSA, the Coast Guard has no authority to take possession of, and move these vessels during emergency periods such as the approach of a hurricane. Rather, Coast Guard enforcement is limited to imposing civil or criminal penalties on anyone who fails to comply with the requirements of an order or regulation issued under PWSA. Therefore early identification of vessels that may be unwilling to depart the area, or are unable to remain safely moored within the area during a storm, is extremely important and will provide the Coast Guard time to consider alternatives and work with interagency authorities and vessel and facility representatives to appropriately resolve the problem well in advance of a storm.

#### C. Discussion of Comments, Changes and the Final Rule

Seven individuals or companies submitted a total of 18 comments to the SNPRM. The Coast Guard's response to these comments are discussed in detail below, however, the Coast Guard has not made any substantial changes from the requirements proposed in the SNPRM as a result of these comments.

One comment expressed concern that proposed mooring criteria are more stringent than the criteria in the interim rule, which would require additional professional engineering certification resulting in additional costs for compliance for this particular

entity. The interim rule published in 2010 stated that the Coast Guard would reevaluate the need for the Regulated Navigation Area and make changes and proposals in a final rule as appropriate. In developing the mooring criteria proposed in the SNPRM and implemented by this final rule, the Coast Guard worked with the USACE to determine acceptable standards and parameters that reduce risk within the canal basins. In February 2013, the USACE provided engineering analysis based on the design and construction of the newly completed HSDRRS which determined that mooring criteria needed to meet more stringent requirements for potential surge height, wind speeds, etc. In February 2013, the USACE provided correspondence to the Coast Guard recommending that we incorporate aspects of the standard mooring criteria found in United Facilities Criteria (UFC) 4-159 and the American Society of the Civil Engineers (ASCE) 7 that could be utilized by professional engineers in designing and approving the mooring standards. Therefore, the Coast Guard proposed a standard consistent with the maximum potential water levels USACE has determined could occur with sustained heavy rainfall over a 24 hour timeframe within the HSDRRS system. In this correspondence, the USACE recommended that the Coast Guard utilize design wind loads based on ASCE 7. The two design values mentioned are 88 mph and 140 mph. To decrease risk of a vessel breaking away from its mooring, the Coast Guard incorporated the more stringent 140

mph wind requirement, which represents a three-second maximum gust velocity in the New Orleans area as outlined by the USACE. We understand that since 2009 facilities who wished to keep vessels in the RNA during storms had to submit multiple engineering analyses which resulted in financial expenditures for each entity. Final determination on criteria required was simply not available at the time the interim rule was established. This final rule and the criteria included were developed over four years of partnerships between all entities involved to lessen the burden of multiple engineering analyses.

One comment requested that the Coast Guard differentiate restrictions and requirements based upon vessel tonnage, measured or dead weight or construction. The Coast Guard does not possess data, and is not aware of a data source, clearly delineating risk in relation to size of vessels. The USACE determined that without an analysis determining the resiliency of the I-walls, no vessels, tanks, yachts, boats, campers, buildings or other structures should be allowed to impact the floodwalls. Without this clear delineation, the Coast Guard will require all floating vessels intending to remain in the RNA during a storm event to submit Annual Hurricane Operation Plans and meet the requirements outlined within this final rule to reduce risk within the canal basins. The Coast Guard is very aware of the risk in this area and has closely coordinated with multiple agencies regarding that

risk. In the absence of further analysis or other non-Coast Guard actions to mitigate risks such as reinforcing floodwalls and levees or installing barriers protecting them, the Coast Guard is compelled to take a conservative approach. Furthermore, as outlined in correspondence to the Southeast Louisiana Flood Protection Authority East dated August 20th, 2012, the USACE plans to analyze the resiliency of the I-walls subject to impact loads from small vessels, small floating objects, characteristics of boat impacts, limiting velocities and boat weight to further classify which vessels actually constitute a risk. Should this occur, the Coast Guard may review or update this regulation to potentially exempt certain classes of vessels from these regulatory requirements. In the absence of such policy, direction or analysis, the Coast Guard has decided to make this regulation applicable to all vessels in the RNA, regardless of size, to provide the maximum protection possible to the flood protection structures in the area.

One comment requested the Coast Guard reevaluate the surge height requirement for engineering certification to the lowest height of the levee walls within the canal basins as well as consider wind directions that could affect water rise. The Coast Guard has done this for surge heights; the height in the SNPRM reflects the lowest height of a levee or floodwall in each canal basin. Based on USACE analysis these heights may be reached by

maximum potential rainfall amounts that could occur within a 24-hour period. The Coast Guard did not factor potential wind directions for surge height requirements because decisions to enforce and implement the provisions found in this final rule would need to occur much sooner than actual known wind directions which are subject to changing forecasts, intensities or error in track models.

One comment described a financial hardship for small craft moorings to meet mooring requirements for winds of 140 mph and requests vessels be allowed to utilize temporary lines in meeting the 140 mph requirements. This final rule implements the transition from a waiver-based system to a performance-based system proposed in the SNPRM. It also allows the facility owners to work with professional engineers on a plan that meets the performance requirements, either with permanent fixed mooring systems, mooring lines or a combination of both.

One comment requested the Coast Guard allow the standby tugboat requirement for individual facilities to be satisfied by sharing tug(s) across facilities within established geographic limits. The ability for facilities to allow vessels to stay during RNA enforcement under this final rule is grounded in the requirement that each facility owner be responsible for all vessels contained within their annual hurricane operations plan. The Coast Guard will be reviewing these annual hurricane

operations plans and ensuring that each individual entity meets the requirements in this final rule to reduce risk of a breakaway at a facility. Expanding a tug's standby area across multiple businesses and a wider geographic area increases the risk of a vessel breakaway. In the event of multiple breakaways at different facilities, the likelihood that a breakaway would not be responded to given challenges in prioritizing a tug's response across businesses is certainly increased. The Coast Guard intends for each facility owner to be prepared with the required on-scene tugs should a scenario occur where multiple facilities need their tug assistance and where a sharing of resources may not be practicable. Once again the Coast Guard is only specifying these requirements for facilities with floating vessels choosing to deviate from the RNA and intending to remain within the RNA geographic area during a tropical event. Should the facility not want to incur the additional cost, they may remove the vessel.

One comment requested the Coast Guard include in the regulation that the Port Coordination Team would be consulted prior to mandatory evacuations in the event a particularly dangerous storm is predicted. The Coast Guard agrees and has included this in the regulation at 33 CFR 165.838 (c) (4).

One comment expressed concerns that mooring arrangement design criteria were significantly increased from the SNPRM, are

too stringent, and may not reflect realistic storm conditions which may occur within the canal basins. The commenter requested further discussion on the reasoning for these new requirements. In drafting this Final Rule, the Coast Guard worked with the USACE and maritime stakeholders to determine acceptable standards and parameters that reduced risk within the canal basins. The criteria in this rule was provided by the USACE based on engineering of the completed HSDRRS and their analysis of conditions (surge heights and wind speeds) that could occur within the canals in the RNA during a storm, even with navigation structures closed as outlined in correspondence to the Coast Guard from the USACE on February 7th, 2013. The USACE proposed that the standards found in UFC 4-159 and ASCE 7 were sufficient to meet the criteria. The Coast Guard relied upon the engineering expertise of the USACE to reduce risk during dangerous storms. Absent new information disputing these recommendations the Coast Guard feels it necessary to move forward with these requirements. However, the Coast Guard will accept new information that may be beneficial for future updates for this RNA.

One comment requested this final rule expand the RNA to include: (a) the "Golden Triangle-area" on the protected side (West) of the Lake Borgne Barrier, bound by the Gulf Intracoastal Waterway (GIWW), Mississippi River Gulf Outlet (MRGO) and the

IHNC Lake Borgne Surge Barrier; (b) a half mile buffer on the East Side of the IHNC Lake Borgne Surge Barrier parallel to the entire structure; (c) the area along the de-authorized MRGO channel adjacent to the St. Bernard Floodwalls extending a half mile past the southernmost portion of the wall; and (d) the Hero Canal outside of the HSDRRS. The Coast Guard does not intend to extend the RNA geographic parameters outside of what was proposed in the supplemental rule at this time.

The "Golden Triangle", MRGO, and half mile area around the IHNC Lake Borgne Surge Barrier are not areas where vessels typically operate or moor in inclement weather. Should the USACE identify vessels that pose a significant risk during a tropical event in this area, the Coast Guard will issue individual COTP orders directing them to relocate outside these areas adjacent to the RNA. In regards to Hero Canal, which is outside of the West Closure Complex and adjacent to an earthen levee system, the Coast Guard does not intend to include this in the RNA without further analysis provided by levee design and construction entities demonstrating a potential risk from vessels in the canal. Hero Canal is not a waterway with commercial facilities and moorings in areas subject to storm surge during hurricanes. Hero Canal has traditionally been an area where smaller fishing vessels sought safe refuge during dangerous storms before the HSDRRS was completed. During Hurricane Isaac, fishing vessels



sought safe refuge within the HSDRRS. Lessons learned from those seeking safe refuge during Hurricane Isaac resulted in the Coast Guard, USACE, Southeast Louisiana Flood Protection Authority West, other state and local agencies and the fishing community discussing allowing these vessels to stage within this canal for tropical events instead of within the RNA in the protected side of the West Closure Complex. Of note, expanding RNA Geographic areas from what was proposed within the SNPRM would require additional public comment. The Coast Guard feels it necessary to publish this final rule without further change or comment, providing those affected sufficient time to comply with RNA requirements before the 2014 Hurricane Season. However, the Coast Guard will entertain future proposed changes to this final rule should further analysis be provided to support a future update rule.

One comment requested the Coast Guard clearly define particularly dangerous storm and consider complete evacuation of all vessels. This Final Rule already contains wording that allows the COTP the flexibility to require all vessels to vacate the RNA should a particularly dangerous storm be predicted to impact the RNA area. The Coast Guard believes that flexibility is necessary in determining what storm forecasts may warrant a complete RNA evacuation. Storm track and strength forecasts are uncertain and scenarios which impact the RNA are wide ranging,

making specific scenario description impractical in regulation. However, as previously mentioned, the Coast Guard accepts that this decision should be made in consultation with the Port Coordination Team and has included this in the regulation.

One comment requested that the Coast Guard require all vessels with Hurricane Operation Plans be required to maintain a constant state of compliance with this rulemaking throughout the calendar year. The Coast Guard will ensure that all facilities allowing vessels to remain in the RNA during a tropical event submit an Annual Hurricane Operations Plan but will not enforce the implementation of that plan until necessary for a particular weather event. The Coast Guard and USACE will be conducting monthly patrols during hurricane season to ensure those with Hurricane Operation Plans are prepared and able to implement those plans for pending tropical events. It is during these monthly patrols that verification checks will be made to ensure facilities are compliant with their certified plan. Requiring facilities to moor vessels in accordance with mooring plans for inclement weather simply isn't justified until the COTP announces the enforcement of the RNA. Other facility owners who intend to vacate the RNA upon activation are not required to comply with the RNA mooring requirements. If a facility with a valid Hurricane Operations Plan is not compliant with their certified plan, the vessels moored there will be required to vacate the RNA

also.

One comment requested the Coast Guard consider removing all vessels from the IHNC corridor and revise the current language which states the "Coast Guard is not inclined to allow any floating vessels to remain within the IHNC portion of the Canal Basin". The Coast Guard considers that the current wording is adequate to address the risk in that area. The Coast Guard has no intentions to support any additional annual Hurricane Operation Plan submissions for floating vessels within higher risk IHNC areas. Performance based criteria will not apply to the IHNC area, and any vessels who expect to remain will need to apply for a deviation and demonstrate that mooring arrangements provide an equivalent level of safety. As was previously mentioned, the USACE has stated an analysis would be produced to determine the resiliency of the I-walls subject to impact loads from small vessels, small floating objects, characteristics of boat impacts, limiting velocities and boat weight to further classify which vessels actually constitute a risk. Once that analysis is produced and clearly identified, the Coast Guard would be willing to review or update this Final Rule, which may allow certain classes of vessels to remain within the IHNC. In the absence of such policy, direction or analysis, the Coast Guard intends to maintain current posture and wording as outlined within this Final Rule.

One comment notified the Coast Guard that revised mooring criteria were being developed which may slightly differ from what the Coast Guard was proposing. The commenter requested that these newly revised criteria be included in this final rule. After a two year process of crafting this rule with multiple Federal, State and local entities, the Coast Guard is moving forward with publishing this final rule with current information. The Coast Guard however is open to future recommendations on mooring guidance and, if appropriate, would reexamine these standards in a future rulemaking. The Coast Guard is publishing this rule to enable vessels, facility owners and operators sufficient time to comply with requirements in time for the 2014 Hurricane Season.

One comment requested that mooring criteria identified within this final rule be considered a minimum requirement and further stated that additional mooring criteria utilizing UFC 4-159 would be provided to the Coast Guard for inclusion in this rule. The commenter suggested apparatus design plans that accompany a waiver application should be reviewed by the USACE and approved or denied by the USCG. The Coast Guard has stated in this final rule that the intent of this rulemaking is transitioning from a waiver approval process to a performance based system. The Coast Guard agrees with the commenter and will partner with the USACE in the annual review and submission of all

Hurricane Operational Plans. The Coast Guard agrees that requirements described in this rulemaking are minimum requirements that should be attained by all vessel and facility operators, and that mooring designs need to be certified by a professional engineer. As previously stated, after a two year process of crafting this rule with multiple Federal, State and local entities, the Coast Guard is moving forward with publishing this final rule with current information to ensure vessels, facility owners, and operators have sufficient time to comply with requirements for the 2014 Hurricane Season.

One comment stated that the actual size and type of lashing shall be designed by the owner's professional engineer and shall be included in the required annual hurricane operations plan and be consistent with UFC 4-159. The Coast Guard believes this comment is already addressed within this regulation and specifically within the requirements for a professional engineer to certify minimum attainment of the mooring design criteria.

Two related comments requested clarification on the regulatory text relating to allowable actions within the RNA during the enforcement period and how that relates to the closing of the navigational structures. For further clarification, the Coast Guard intends to begin enforcement of the RNA 24 hours in advance of the anticipated closure of either the IHNC Lake Borgne Surge Barrier or the West Closure Complex. When the Coast Guard

announces that the RNA will be implemented, all vessels not having an approved plan to remain in the RNA need to begin vacating the RNA, and need to be out of the RNA area prior to the closure of the structures or locks. All vessels that are transiting through the RNA will be allowed to transit providing there is sufficient time to either vacate or reach their intended and approved location. Progress and status of RNA evacuation will be monitored by Port Assessment Teams comprising representatives of the USCG, USACE and the levee protection authorities.

Finally, one comment asked whether the Coast Guard had sufficient resources to perform compliance inspections needed to ensure all vessels remaining in the RNA are properly moored to an approved mooring facility. Yes, the Coast Guard has sufficient resources, utilizing Port Assessment Teams that patrol the RNA area during hurricane season to maintain maritime domain awareness in the canals, counting vessels, and analyzing how long it would take for vessels to vacate the RNA area should a tropical event occur. Additionally, during a possible tropical event, the Coast Guard, USACE and levee protection authorities patrol daily to ensure facilities that have submitted annual hurricane operation plans are complying with those plans and address any concerns identified during those patrols. The success of these patrols and the joint effort between our port partners to enact the RNA was demonstrated during Hurricane Isaac

and Tropical Storm Karen where the RNA was successfully implemented with current resource levels.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

In determining if this rule was a significant regulatory action, the Coast Guard considered alternatives so as not to unduly impact the segment of the economy impacted by the RNA. Furthermore, the Coast Guard also incorporated mooring requirements in regulation that negates the need for annual waivers greatly reducing associated costs. The Coast Guard incorporated into the regulatory requirements a provision that enables plans to be submitted with alternative minimum mooring requirements which will be reviewed by the COTP on a case-by-case

basis. This provision enables the Coast Guard to review and allow mooring alternatives such as piling systems that permanently moor a vessel not intending to move from its berth that present an equal or greater level of safety under the regulation in an effort to mitigate possible regulatory and economic impacts. The Coast Guard also provided a series of questions for industry comment with the sole purpose of determining regulatory and economic impact. The questions were provided to those entities that had submitted waivers to remain in the RNA under the Interim Rule, along with the responses received, are available for public viewing in the docket.

Based on responses to the questions, the Coast Guard modified the proposed tug boat requirements for on-scene monitoring of vessels during RNA enforcement. The Coast Guard originally contemplated requiring each facility with three or more vessels to have one tug on-scene for every 25 vessels. As a result of the Coast Guard's outreach to industry with these questions and subsequent responses indicating an unnecessary economic hardship, the Coast Guard modified this requirement. The SNPRM proposed every facility with eight or more vessels to maintain one tug for every 50 vessels which significantly reduces the economic impact on industry but still provides a substantial measure of safety in the event that tugs are required in an emergency.



## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or moor in the RNA during enforcement, and the owners or operators or facilities in the RNA who intend to keep vessels at their facility during enforcement of the RNA. On a case by case basis, the Coast Guard will continue to review alternatives to the minimum mooring requirements for those that have an equal or greater measure of safety. This provision supports the Coast Guard's ongoing effort to keep this rulemaking from having a significant economic impact on a substantial number of small entities. Also, this regulation seeks to reduce impact on small entities by transitioning to a performance based system allowing vessels to remain if they meet the mooring requirements in the regulation. In addition, several

routes for vessel traffic exist for departure from the area before the RNA goes into effect.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule may be found to call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C.

3501-3520.)). The Coast Guard solicited voluntary information concerning this rulemaking from 10 of the 10-14 maritime industry entities that have applied for waivers to deviate from this RNA during the past four years. This solicitation did not meet the guidelines of a new collection of information. The information solicited from the maritime industry and waterway users was specific to the impacts of the RNA. Questions included but were not limited to, addressing the economic costs and benefits of providing an option for vessels and facilities to deviate from the RNA restriction by providing Hurricane Operations Plans allowing them to remain in areas of the RNA during enforcement. Comments received during public meetings and public comment periods throughout this rulemaking project, show that industry wants the option to safely and securely deviate from the RNA restriction. Facilities operating in this area are aware of the threat of tropical weather conditions and already have operation plans specific to Hurricane season in place. Such a plan is part of their normal course of business. Therefore, this final rule does call for a collection of information in the form of an operational plan from vessels and facilities that wish to deviate from the restrictions under the RNA when enforced. As understood from industry and waterway user comments and responses to the posed questions, no new information would need to be collected. Such requirement replaces the waiver option in the existing RNA.

Still, the Coast Guard has been advised that this final rule may include a collection of information as defined under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. Regarding the burden to respond to this collection of information, under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with the information required to deviate under this rule is excluded, and therefore should not be considered a burden because it will be incurred in the normal course of business and activities.

The Coast Guard will publish a notice requesting comments on revising existing OMB Control Number: 1625-0043 to include any collection of information resulting from requirements to voluntarily deviate from this RNA. OMB Control Number 1625-0043. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden are included in that notice, which may be found under the same docket number, USCG-2009-0139, as indicated under ADDRESSES.

## 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally

Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order

12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This Final Rule involves establishing a regulated navigation area as defined within this regulation, which is categorically excluded under figure 2-1, paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this

rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

2. Revise § 165.838 to read as follows:

§ 165.838 Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA.

(a) Location. The following is a regulated navigation area (RNA):

(1) The Gulf Intracoastal Waterway (GIWW) from Mile Marker (MM) 22 East of Harvey Locks (EHL), west on the GIWW, including the Michoud Canal and the Inner Harbor Navigation Canal (IHNC), extending North 1/2 mile from the Seabrook Flood Gate Complex out into Lake Pontchartrain and South to the IHNC Lock.

(2) The Harvey Canal, between the Lapalco Boulevard Bridge and the confluence of the Harvey Canal and the Algiers Canal;



(3) The Algiers Canal, from the Algiers Lock to the confluence of the Algiers Canal and the Harvey Canal;

(4) The GIWW from the confluence of Harvey Canal and Algiers Canal to MM 7.5 West of Harvey Locks (WHL)

(b) Definitions. As used in this section:

(1) *Breakaway* means a floating vessel that is adrift and that is not under its own power or the control of a towboat, or secured to its moorings.

(2) *COTP* means the Captain of the Port, New Orleans;

(3) *Facility* means a fleeting, mooring, industrial facility or marina along the shoreline at which vessels are or can be moored and which owns, possesses, moors, or leases vessels located in the areas described in paragraph (a) of this section.

(3) *Fleet* includes one or more tiers of barges.

(4) *Fleeting or mooring facility* means the area along the shoreline at which vessels are or can be moored.

(5) *Floating vessel* means any floating vessel to which the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq., applies.

(6) *Mooring barge or spar barge* means a barge moored to mooring devices or secured to the ground by spuds, and to which other barges may be moored.

(7) *Mooring device* includes a deadman, anchor, pile or other reliable holding apparatus.

(8) *Navigational structures* are the Seabrook Floodgate Complex, the IHNC Lake Borgne Surge Barrier, and the West Closure Complex components of the Hurricane and Storm Damage Risk Reduction System (HSDRRS).

(9) *Person in charge* includes any owner, agent, pilot, master, officer, operator, crewmember, supervisor, dispatcher or other person navigating, controlling, directing or otherwise responsible for the movement, action, securing, or security of any vessel, barge, tier, fleet or fleeting or mooring facility subject to the regulations in this section.

(10) *Tier* means barges moored interdependently in rows or groups.

(11) *Port Coordination Team* is a body of public and private port stakeholders led by the COTP whose purpose is to share information, establish priorities, recommend and implement actions to address risks to ports and waterways during incidents and events.

(12) *Tropical Event* means the time period immediately preceding, during, and immediately following the expected impact of heavy weather from a tropical cyclone.

(c) Enforcement. (1) The provisions of paragraph (d) of this section will be enforced during a tropical event beginning 24 hours in advance of the predicted closure of the IHNC Lake

Borgne Surge Barrier structure within the HSDRRS (IHNC & GIWW) in the area defined in paragraph (a)(1) of this section.

(2) The provisions of paragraph (d) of this section will be enforced beginning 24 hours in advance of the predicted closure of the West Closure Complex within the HSDRRS (Harvey & Algiers Canals) in the area defined in paragraphs (a)(2) through (4) of this section.

(3) If the Coast Guard receives notice of a closure less than 24 hours before closure, the provisions of paragraph (d) of this section will be enforced upon the COTP receiving the notice of predicted closing.

(4) In the event that a particularly dangerous storm is predicted, the COTP, in consultation with the Port Coordination Team, may require all floating vessels to evacuate the RNA beginning as early as 72 hours before predicted closure of any navigational structure or upon notice that particularly dangerous storm conditions are approaching, whichever is less.

(5) The COTP will notify the maritime community of the enforcement periods for this RNA through Marine Safety Information Bulletins and Safety Broadcast Notices to Mariners.

(d) Regulations. During the period that the RNA is enforced and before closure of the navigational structures, all floating vessels must depart the RNA except as follows:

(1) Floating vessels may remain in the Harvey and Algiers Canals, provided they are moored sufficiently to prevent a breakaway and meet the minimum mooring requirements and conditions set forth in paragraphs (f) and (g) of this section.

(2) Floating vessels may remain in the Michoud Canal at least 1/4 mile north of the intersection of the Michoud Canal and the GIWW, the GIWW from MM 15 EHL to MM 10 EHL, provided they are moored sufficiently to prevent a breakaway and meet the minimum mooring requirements and conditions set forth in paragraphs (f) and (g) of this section.

(3) During the period that the RNA is enforced and before closure of the navigational structures, vessels may transit through the RNA en route to a destination outside of the RNA given there is sufficient time to transit prior to the closure of a navigational structure, or they may transit to a facility within the RNA with which they have a prearranged agreement. These vessel movements and time critical decisions will be made by the COTP in consultation with the Port Coordination Team.

(4) The COTP may review, on a case-by-case basis, alternatives to minimum mooring requirements and conditions set forth in paragraphs (f) and (g) of this section and may approve a deviation to these requirements and conditions should they provide an equivalent level of safety.

(e) Special Requirements for Facilities. In addition to the mooring and towboat requirements discussed in paragraph (f) and (g) of this section, Facilities within the area described in paragraph (a) of this section that wish to deviate from these restrictions because they have vessels intending to remain within the areas allowed in paragraphs (d)(1) and (2) of this section shall comply with the below documentation and maintenance requirements in order to obtain the COTP's approval for their vessel(s) to remain in the closed RNA.

(1) Annual Hurricane Operations Plan. All facilities that have vessels intending to deviate from this RNA and remain within the areas allowed in paragraphs (d)(1) and (2) of this section shall develop an operations plan. The operations plan shall be readily available by May 1st of each calendar year for review by the COTP. The Annual Hurricane Operations Plan shall include:

(i) A description of the maximum number of vessels the facility intends to have remaining at any one time during hurricane season.

(ii) A detailed plan for any vessel(s) that are intended to be sunk/grounded in place when the RNA is enforced if evacuation is not possible.

(iii) A diagram of the waterfront facility and fleeting area.

(iv) Name, call sign, official number, and operational status of machinery on board (i.e., engines, generators, fire fighting pumps, bilge pumps, anchors, mooring machinery, etc.) each standby towboat.

(v) Characteristics for each vessel remaining at the fleeting or mooring facility, as applicable (length, breadth, draft, air draft, gross tonnage, hull type, horsepower, single or twin screw);

(vi) Details of mooring arrangements in accordance with mooring requirements and conditions set forth in paragraphs (g) and (h) of this section or COTP case-by-case approved deviations;

(vii) Certification by a professional engineer that the mooring arrangements are able to withstand winds of up to 140 mph, a surge water level of eleven feet, a current of four mph and a wave height of three feet within the canal basin in the area defined in paragraph (a)(1) of this section and a surge water level of eight feet, a current of four mph, and a wave height of two and a half feet within the canal basin in the area defined in paragraphs (a)(2) through (4) of this section;

(viii) Emergency contact information for the owner/operator, and/or agent of the facility/property.

(ix) 24-hour emergency contact information for qualified individuals empowered in writing by the owners/operators to make

on-site decisions and authorize expenditures for any required pollution response or salvage.

(x) Full insurance disclosure to the COTP. Vessels moored to a facility shall provide insurance information to the facility.

(2) Storm Specific Verification Report. 72 hrs prior to predicted closure of the navigational structures, those facilities which have vessels that intend to remain within the RNA shall submit a Storm Specific Verification Report to the COTP New Orleans. The requirements for this Storm Specific Verification Report are located in the Canal Hurricane Operations Plan, which is Enclosure Six to the Sector New Orleans Maritime Hurricane Contingency Port Plan, <http://homeport.uscg.mil/nola>. The report shall include:

(i) Updated contact information, including names of manned towboat(s) and individuals remaining on the towboat(s).

(ii) Number of vessels currently moored and mooring configurations if less than stated in Annual Hurricane Operations Plan.

(iii) If the number of vessels exceeds the amount listed in the Annual Hurricane Operations Plan, describe process and timeframe for evacuating vessels to bring total number of vessels into alignment with the Annual Hurricane Operations Plan.

(3) The person in charge of a facility shall inspect each mooring wire, chain, line and connecting gear between mooring devices and each wire, line and connecting equipment used to moor each vessel, and each mooring device. Inspections shall be performed according to the following timelines and guidance:

(i) Annually between May 1 and June 1 of each calendar year; and

(ii) After vessels are added to, withdrawn from, or moved at a facility, each mooring wire, line, and connecting equipment of each barge within each tier affected by that operation; and

(iii) At least weekly between June 1 and November 30; and

(iv) 72 hrs prior to predicted closure of the navigation structures within this RNA; or within 6 hrs of the predicted closure, if the notice of predicted closure is less than 72 hrs.

(4) The person who inspects moorings shall take immediate action to correct any deficiency.

(5) Facility Records. The person in charge of a fleeting or mooring facility shall maintain, and make available to the COTP, records containing the following information:

(i) The time of commencement and termination of each inspection.

(ii) The name of each person who makes the inspection.



(iii) The identification of each vessel, barge entering or departing the fleeting or mooring facility, along with the following information:

(A) Date and time of entry and departure; and

(B) The names of any hazardous cargo which the vessel is carrying.

(6) The person in charge of a facility shall ensure continuous visual surveillance of all vessels at the facility.

(7) The person who observes the vessels shall:

(i) Inspect for movements that are unusual for properly secured vessels; and

(ii) Take immediate action to correct each deficiency.

(f) Mooring Requirements. Facility owners shall consider all requirements within this section as minimum standards. Title 33 CFR 165.803, United Facilities Criteria (UFC) 4-159 and American Society of the Civil Engineers (ASCE)<sup>7</sup> should be utilized by Professional Engineers in the certification of the Annual Hurricane Operations Plan.

(1) No person may secure a vessel to trees or to other vegetation.

(2) No person may allow a vessel to be moored with unraveled or frayed lines or other defective or worn mooring.

(3) No person may moor barges side to side unless they are secured to each other from fittings as close to each corner of abutting sides as practicable.

(4) No person may moor barges end to end unless they are secured to each other from fittings as close to each corner of abutting ends as practicable.

(5) A vessel may be moored to mooring devices if both ends of that vessel are secured to mooring devices.

(6) Barges may be moored in tiers if each shoreward barge is secured to mooring devices at each end.

(7) A vessel must be secured as near as practicable to each abutting corner by:

(i) Three parts of wire rope of at least 1 ¼ inch diameter with an eye at each end of the rope passed around the timberhead, caval, or button;

(ii) A mooring of natural or synthetic fiber rope that has at least the breaking strength of three parts of 1 ¼ inch diameter wire rope; or

(iii) Fixed rigging that is at least equivalent to three parts of 1 ¼ inch diameter wire rope.

(8) The person in charge shall ensure that all mooring devices, wires, chains, lines and connecting gear are of sufficient strength and in sufficient number to withstand forces that may be exerted on them by moored vessels/barges.

(g) Towboat Requirements. The person in charge of a fleeting or mooring facility must ensure:

(1) Each facility consisting of eight or more vessels that are not under their own power must be attended by at least one radar-equipped towboat for every 50 vessels.

(2) Each towboat required must be:

(i) Able to secure any breakaways;

(ii) Capable of safely withdrawing or moving any vessel at the fleeting or mooring facility;

(iii) Immediately operational;

(iv) Radio-equipped;

(v) No less than 800 horsepower;

(vi) Within 500 yards of the vessels.

(3) The person in charge of each towboat required must maintain a continuous guard on the frequency specified by current Federal Communications Commission regulations found in 47 CFR part 83; a continuous watch on the vessels moored at facility; and report any breakaway as soon as possible to the COTP via telephone, radio or other means of rapid communication.

(h) Transient vessels will not be permitted to seek safe haven in the RNA except in accordance with a prearranged agreement between the vessel and a facility within the RNA.

(i) Penalties. Failure to comply with this section may result in civil or criminal penalties pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq.

Dated: April 1, 2014.

K. S. COOK,  
Rear Admiral, U.S. Coast Guard,  
Commander, Eighth Coast Guard District.

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